(4)

P. R. No. 3443/03
Presented by Shri M.C. Sinha
dated 03.11.03

IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH AT BILASPUR

W.P.NO.3580 OF 2003

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

PETITIONER : Satya Deo Mishra, aged about 48 years, S/o Shri J.B.Mishra, Forest Range Officer, R/o. Kosabadi, Korba, Tahsil and District Korba (C.G.).

3-11-03

VERSUS

RESPONDENT : State of Chhattisgarh through Secretary Forest Department Government of Chhattisgarh DKS Bhawan, Raipur (C.G.).

एम.के. मुकला
बिलासपुर (छ.ग.)
बिलासपुर तहसील
62/1/03

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRIT / WRITS, ORDER / ORDERS DIRECTION/DIRECTIONS ETC.

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..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

12-4-2005

Mr. K.A. Ansari, Senior Advocate with Mr. M.K. Sinha, Advocate for the petitioner.

Mr. Sanjay Shyam Agrawal, Govt. Advocate for the State/respondent.

The petitioner, who is working as Forest Range Officer in the Forest Department, State of Chhattisgarh, has preferred this writ petition under Article 226 of the Constitution of India, questioning the legality and propriety of the order dated 8-4-2003 (Annexure P-6) whereby the petitioner has been transferred from Korba to Narayanpur, also the order dated 8-10-2003 (Annexure P-14) whereby the representation made by the petitioner in pursuance of the Court's direction has been rejected and also the order dated 10-10-2003 (Annexure P-16) whereby the petitioner was relieved from Korba.

The petitioner mainly has challenged his transfer order on the ground that he has been transferred from Korba within a period of six months and also on the ground that during the period 1988-90 the petitioner was posted in Jagdalpur area, from there on 21-9-1990 he was transferred to the Naxalite affected area i.e. Kristaram under South Bastar Division at a distance of 48 kms. from Konta. During the probationary period as a Range Officer at Wild Buffalo Sanctuary, the petitioner worked with enthusiasm and took stern action against the poachers and encroachers, which resulted in feelings of revenge in the mind of Naxallites, active in the area. The petitioner discharged his duties with all sincerity and devotion, therefore, he became the target of the Naxalites. Looking to the hostility of the Naxalites and apprehending danger to his life, the petitioner submitted a representation dated 25-10-1990 to the then Forest Minister of the erstwhile State of Madhya Pradesh wherein he described all the circumstances and risk of life

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involved in case the order of posting at Kristaram is not cancelled, and looking to that the said transfer was cancelled by the then Forest Minister of the State of Madhya Pradesh vide Annexure P-2 and the petitioner was transferred to Rajnandgaon, there he worked up to 1994.

Return has been filed on behalf of the State/respondent and in para 26 of the return it has been mentioned that the allegations contained in paragraphs 5.9, 5.10, 5.11, 5.12 & 5.13 of the petition are denied. It is respectfully submitted that if only because the petitioner has submitted some representation the contents thereof may not be regarded to be true statements of facts. The petitioner might have submitted these facts in order to get himself transferred out of the Jagdalpur Circle. The petitioner has not worked in any Naxalite infested area since November, 1990. Some one has to work in those areas. If all the employees and officers refuse to work in these areas the benefit of the welfare schemes of the Government cannot reached to the gross root levels.

I have heard learned counsel for the parties and perused the record.

Perusal of para 2 of the representation made by the petitioner in the year 1990 to the then Forest Minister of the erstwhile State of Madhya Pradesh reveals that at that time, the petitioner mentioned in the representation that when he was posted as Supervisor in the Matwada Range there was encroachment in that area and the encroachments were being removed, the Naxalites used to put on fire the forest and they were also involved in illegal killing of the animals and when he was preventing them from doing these activities his name was put in the hit list. It is further mentioned that even on 8-8-1990 when he was going from Jagdalpur to Geedam on motorcycle at about 4 O' clock in the night some attack was made on him by axe to kill him, but he was saved on account of the high

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speed of the motorcycle. Considering that representation, the petitioner was transferred from Kristaram area to Rajnandgaon vide order dated 1-11-1990. In this petition also the petitioner has raised the same point.

Vide order dated 24-11-2003 and again vide order dated 14-6-2004, the respondent was directed to ascertain about these assertions made by the petitioner. Inspite of a clear cut stand of the petitioner without mentioning anything about the veracity of the assertions made by the petitioner, the respondent in its reply simply mentioned that the representation made by the petitioner cannot be taken as a true statement of facts and he might have submitted these facts in order to get himself transferred out of Jagdalpur circle. Inspite of the order made by the Court that respondent to ascertain about the veracity of the assertions made by the petitioner, it has not come forward with a clear cut reply as to whether these assertions are correct or not. It is not said that it was not possible for the respondent to ascertain the veracity of the assertions made by the petitioner. On the request made by the petitioner by way of representation to the erstwhile Minister that he is in the hit list of the Naxalites, considering that representation the erstwhile Minister of the State of Madhya Pradesh transferred him and again same assertion has been made by the petitioner, therefore, the assertion made by the petitioner cannot be taken lightly as there is no specific reply on the part of the State/respondent. Simple denial is not sufficient to reject the assertion of the petitioner. The State was required to reply that whether the petitioner was in the hit list of the Naxalites or not and whether any attempt was made on his life or not.

In view of the above facts, when the petitioner is in the hit list of the Naxalites, the ground raised by the petitioner is correct and it cannot be taken lightly. Therefore, I am of the opinion that the impugned orders are

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liable to be quashed only on this score being arbitrary as the same were passed without considering this aspect of the point raised by the petitioner. Accordingly, the impugned orders Annexures P-6, P-14 & P-16 are quashed. However, as the petitioner is working at Korba since May, 2002, and he is about to complete three years tenure there, therefore, now the respondent is at liberty to pass order regarding posting of the petitioner, if administrative exigency so requires.

Stay order dated 24-11-2003 granted by this Court and continued later on stands vacated.

With the above observations and directions, the petition stands disposed of.

Consequently, I.A.Nos.132/2004, 498/2004, 56/2005 & 57/2005 also stand disposed of.

Parties are entitled for certified copy of this order.

Sd/-
L.C. Bhadoo
Judge

Soma